

No. 14648

**United States
Court of Appeals**
for the Ninth Circuit

CIVIL AERONAUTICS BOARD,

Appellant,

vs.

FRIEDKIN AERONAUTICS, INC., Doing Business as PACIFIC SOUTHWEST AIRLINES,

Appellee.

Transcript of Record
In Two Volumes

Volume I
(Pages 1 to 96)

**Appeal from the United States District Court for the
Southern District of California,
Central Division.**

FILED

APR 29 1955

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission **seems** to occur.]

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United States District Court, Southern District of
California, Central Division

Civil No. 16754-HW

CIVIL AERONAUTICS BOARD,

Plaintiff,

vs.

FRIEDKIN AERONAUTICS, INC., Doing Busi-
ness as PACIFIC SOUTHWEST AIRLINES,

Defendant.

COMPLAINT FOR INJUNCTION

The plaintiff, the Civil Aeronautics Board, hereinafter sometimes referred to as the Board, by its attorneys, complaining of the defendant, alleges as follows:

1. The jurisdiction of this Court is based upon section 1007 of the Civil Aeronautics Act of 1938, as amended (52 Stat. 1025, 49 U.S.C. 647).

2. The plaintiff is the Federal regulatory agency created by the Civil Aeronautics Act of 1938, as amended (Act of June 23, 1938, Ch. 601, 52 Stat. 997; Reorg. Plan No. IV, Section 7, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1235, 49 U.S.C. 401, et seq., hereinafter sometimes referred to as the Act), charged with the responsibility for the regulation of air transportation and the performance of certain duties [2*] prescribed in said Act, including

*Page numbering appearing at foot of page of original Certified Transcript of Record.

the issuance to air carriers of certificates of public convenience and necessity and other authority to engage in air transportation, and causing to be instituted appropriate proceedings for the enforcement of the provisions of such Act against air carriers engaging in air transportation without authority therefor from the plaintiff.

3. The defendant, a citizen of the United States, was at all times herein mentioned and now is a corporation organized and existing under the laws of the State of Nevada, having its principal offices and carrying on business within the Southern District of California at Lockheed Air Terminal, Burbank, California.

4. Section 1(2) of the Civil Aeronautics Act (52 Stat. 977, 49 U.S.C. 401(2)) defines the term "air carrier" as used therein to mean any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation. The term "air transportation" is in turn defined by sections 1(10) and 1(21) of the Act (52 Stat. 977, 49 U.S.C. 401(10) and (21)). The terms "air carrier," "air transportation" and "interstate air transportation," wherever they appear herein, are used in the sense defined by the said sections 1(2), 1(10) and 1(21) of the Act.

5. The Civil Aeronautics Act, particularly section 401(a) thereof (52 Stat. 987, 49 U.S.C. 481(a)), prohibits any air carrier from engaging in air

transportation unless there is in force a certificate of public convenience and necessity or other authority issued by the plaintiff authorizing such air carrier to engage in air transportation. Section 416(b) of the Act (52 Stat. 1004, 49 U.S.C. 496(b)) empowers the plaintiff, under certain conditions, to exempt air carriers from the necessity of compliance with certain provisions of the Act, including the requirements of section 401(a) thereof.

6. Since 1949 and to the date hereof, the defendant has been engaged in the operation of flights of aircraft between various places in the State of California, including San Diego, Burbank, San Francisco [3] and Oakland on which flights it has been and is carrying passengers as a common carrier for compensation and hire. The defendant does not have a certificate of public convenience and necessity, an exemption under section 416(b) of the Act (52 Stat. 1004, 49 U.S.C. 496(b)), or any other authority from the plaintiff authorizing it to engage in air transportation.

7. Beginning prior to September 1, 1953, and continuing to the date hereof, defendant has carried on the flights operated by it between points within the State of California, a substantial number of persons the origination or destination of whose journeys have been places outside the State of California.

8. By reason of the activities and practices described in paragraph 7 hereto, the defendant has

engaged in interstate air transportation as an air carrier within the meaning of the Act. Since the defendant has not been issued a certificate of public convenience and necessity or other authority authorizing it to engage in such air transportation, the defendant has thereby violated section 401(a) of the Act.

9. The plaintiff is informed and believes and, therefore, alleges that the defendant will persist in the activities and practices hereinbefore described, and unless it is promptly restrained and enjoined as hereinafter prayed, it will continue to commit the aforesaid violations of the said Act.

10. A judgment by the Court enjoining and restraining the violations hereinabove alleged is authorized by section 1007 of the Act, upon application of this plaintiff.

Wherefore, the plaintiff demands judgment as follows:

(a) That the defendant and its officers, agents, employees and representatives and each of them be enjoined during the pendency of this action and permanently:

(1) From engaging in air transportation in violation of section 401(a) of the Civil Aeronautics Act of 1938, as amended; and

(2) From transporting on its flights any person for [4] compensation or hire whose transporta-

tion originates or terminates at a place outside of the State of California.

(b) That the plaintiff be granted such other and further relief as the Court may deem necessary and appropriate.

/s/ STANLEY N. BARNES,
Assistant Attorney General;

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ and
ANDREW J. WEISZ,
Assistants United States
Attorney;

By /s/ ANDREW J. WEISZ,
Assistant United States
Attorney;

/s/ JAMES E. KILDAY,

/s/ ALBERT PARKER,
Special Assistants to the
Attorney General;

/s/ JOHN F. WRIGHT,
Acting Chief, Office of Compliance, Civil Aeronautics
Board, Attorneys for the Plaintiff.

Duly verified.

[Endorsed]: Filed May 6, 1954. [5]

[Title of District Court and Cause.]

ANSWER

Defendant Friedkin Aeronautics, Inc., doing business as Pacific Southwest Airlines, hereinafter sometimes referred to as Pacific Southwest Airlines, in answer to the complaint for injunction, admits, denies and alleges as follows:

I.

Admits the allegations of Paragraph 2 with respect to the status and authority of plaintiff only insofar as the same relates to air transportation as defined in the Civil Aeronautics Act of 1938, as amended, to wit:

“Interstate air transportation,” “overseas air transportation,” and “foreign air transportation,” respectively, mean the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage [7] of mail by aircraft, in commerce between, respectively:

(a) A place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the air space over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) A place in any State of the United States, or the District of Columbia, and any place in a

Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

(c) A place in the United States and any place outside thereof, whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

II.

Denies the allegations of Paragraph 3 except that defendant admits that it is a citizen of the United States; defendant alleges that at all times mentioned in said complaint and at present it is a corporation organized and existing under the laws of the State of California, having its principal office and place of business at Lindbergh Field, San Diego, California. [8]

III.

Admits the allegations of Paragraph 6 and further alleges that it has been issued a Commercial Operator's Certificate by the United States of America, Department of Commerce, Civil Aeronautics Administration, which said certificate authorizes defendant to operate as "a commercial operator and to conduct common carrier operations carrying passengers intrastate on a scheduled basis" in accordance with the provisions of the Civil Aeronautics Act of 1938, as amended, and in accordance with the further provisions of said Commercial Operator's Certificate.

IV.

Denies the allegations of Paragraph 7 and further alleges that it has not and does not now carry mail by aircraft or carry property as a common carrier for compensation.

V.

Denies each and every allegation of Paragraph 8.

VI.

Denies each and every allegation of Paragraph 9.

VII.

Denies the allegation of Paragraph 10.

Wherefore, defendant prays the relief requested by plaintiff herein be denied and that the said complaint be dismissed.

For a first and separate defense defendant alleges:

I.

The complaint herein fails to state a claim against defendant upon which relief can be granted.

MESERVE, MUMPER &
HUGHES,

By /s/ LEWIS T. GARDINER,
Attorneys for Friedkin Aeronautics, Inc., d/b/a
Pacific Southwest Airlines.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed July 12, 1954. [9]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

Upon the annexed affidavits of John F. Wright, John B. Flynn, Joseph W. Stout, Jr., Robert F. Rickey and John W. Chambers, and upon the verified complaint filed herein it is hereby:

Ordered, that the defendant in the above-entitled action, Friedkin Aeronautics, Inc., d/b/a Pacific Southwest Airlines, appear on the 17 day of May, 1954, at 10 o'clock a.m. of that day, or as soon thereafter as counsel may be heard, at Room 5, United States Court House and Post Office Building, Temple and Spring Streets, in the City of Los Angeles, California, and show cause why an injunction during the pendency of this action should not be issued as prayed for in the said complaint.

It Is Further Ordered: [12]

That the service of a copy of the Order to Show Cause and annexed affidavits, together with a copy of the aforesaid complaint of the Civil Aeronautics Board upon the defendant be made on or before the 10 day of May, 1954, and that such service be deemed sufficient service hereof.

Dated: Los Angeles, California, May 6, 1954.

/s/ HARRY C. WESTOVER,
United States District Judge.

[Endorsed]: Filed May 6, 1954. [13]

[Title of District Court and Cause.]

AFFIDAVIT

City of Washington,
District of Columbia—ss.

John F. Wright being first duly sworn deposes and says that:

1. He is, and was at all times herein mentioned, employed by the Civil Aeronautics Board as a Compliance Attorney.

2. This is an action seeking an injunction restraining the defendant from violating section 401(a) of the Civil Aeronautics Act of 1938, as amended.

3. Jurisdiction to entertain this action is conferred upon this court by section 1007(a) of said Act.

4. The complaint charges that the defendant has engaged, and is engaging, in air transportation of persons without authority from the Civil Aeronautics Board and thereby, is violating section 401(a) of the Act. [14]

5. The verified complaint and affidavits submitted herewith show that despite the fact that the defendant has no such authority therefor, it has been and is regularly engaged in the carriage for compensation or hire of interstate passengers traveling both east and west transcontinentally by carrying such persons on its flights between Bur-

bank and San Diego and Oakland and San Francisco, California.

6. The defendant has committed the aforesaid violations for a substantial period of time. Unless promptly restrained, the defendant may be expected, on the basis of its past conduct and operations, to continue the activities complained of, and affiant is informed and believes that defendant intends to continue such activities.

7. In the light of the facts set forth in the complaint, affidavits and exhibits, the public cannot immediately and adequately be protected against the violations complained of except through the interlocutory relief prayed for in said complaint.

8. No previous application for the relief demanded herein has been made.

/s/ JOHN F. WRIGHT.

Subscribed and sworn to before me this 29th day of April, 1954.

[Seal] /s/ LOUISE S. MYERS,
Notary Public.

My commission expires 1-14-58. [15]

[Title of District Court and Cause.]

AFFIDAVIT

City of Washington,
District of Columbia—ss.

Joseph W. Stout, Jr., being first duly sworn, deposes and says that:

1. He is, and was at all times herein mentioned, employed by the Civil Aeronautics Board as an Air Transport Examiner.

2. On various occasions during the period between September 6, 1953, and October 22, 1953, affiant personally conducted an investigation to ascertain the facts as to the transportation of interstate passengers by Pacific Southwest Airlines.

3. On September 6, 1953, affiant visited the International Terminal at Washington, D. C., to inspect a representative flight of Skycoach Airlines Agency, Inc., a ticket agent for several air carriers registered with the Board as Large Irregular Carriers, including Currey Air Transport, Ltd., and Great Lakes Airlines, Inc. These air carriers are engaged in the interstate air transportation of passengers between New York, New York; Washington, D. C.; Chicago, Illinois, and other intermediate points, and Burbank, San Diego and Oakland, California. Affiant interviewed Mr. Cliff Stern, the agent on duty, and was advised that Skycoach holds out to the public and provides a daily service from Washington, D. C., to Chicago,

Kansas City, Burbank, San Diego, and Oakland, departing Washington at 8:30 p.m.; that the flight terminates at Burbank; and that the passengers destined for Oakland and San Diego are transported from Burbank to these points on Pacific Southwest.

4. On the same visit at the International Terminal, Washington, D. C., [16] affiant also observed a representative flight of North American Airlines Agency. North American sells transportation on, and arranges flights for, a number of air carriers registered with the Civil Aeronautics Board as Large Irregular Carriers, including Hemisphere Air Transport, Trans American Airways, Inc.; Trans National Airlines, Inc.; Twentieth Century Airlines, Inc., and Unit Export Company, Inc. These carriers engage in the interstate air transportation of persons between New York and Chicago, and New York, Washington, D. C., and Dallas, Texas, and other intermediate points, on the one hand, and Burbank, San Diego, and Oakland, on the other hand. Affiant interviewed Mr. David Stanley, the North American clerk on duty, and was advised that North American holds out to the public and provides a daily flight from Washington, D. C., to Dallas, Burbank, San Diego, and Oakland, departing Washington at 7:30 p.m.; that the flight terminates at Burbank; and that "North American has a deal with Pacific Southwest Airlines to carry the Oakland and San Diego passengers from Burbank."

5. During the period between September 22 and October 22, 1953, affiant conducted his investigation of the activities of Pacific Southwest in Los Angeles and Burbank. His investigation disclosed that the air carriers represented by Skycoach and North American and U. S. Aircoach, another Large Irregular Carrier, have been using Pacific Southwest to provide onward transportation from Burbank for their San Diego and Oakland passengers; and that the service of Pacific Southwest has been similarly available to, and used by, other Large Irregular Carriers operating into Burbank.

6. On October 1, 1953, affiant visited the offices of U. S. Aircoach at Lockheed Air Terminal, Burbank, interviewed Mr. Fritz Hutcheson, the President of U. S. Aircoach, with respect to the transfer of U. S. Aircoach interstate passengers to Pacific Southwest for onward transportation to San Diego and Oakland.

Mr. Hutcheson stated that U. S. Aircoach consistently uses Pacific Southwest to transfer passengers continuing beyond Burbank to San Diego or [17] Oakland. He explained that most of the transfers were for passengers destined to San Diego, because U. S. Aircoach usually operates its own shuttle flight to Oakland, but that occasionally U. S. Aircoach does transfer Oakland passengers to Pacific Southwest, as, for example, on September 18, 1953, when U. S. Aircoach transferred 16 passengers to Pacific Southwest flight 11, which represented 57 per cent of the space available on that

flight, since the capacity of the Pacific Southwest aircraft was 28.

Mr. Hutcheson explained that the procedure for transferring the interstate passengers from U. S. Aircoach to Pacific Southwest at Burbank was as follows: U. S. Aircoach prepares a transfer passenger manifest which lists the names of all passengers to be transferred from U. S. Aircoach to Pacific Southwest. No invoices are used as U. S. Aircoach always makes payment to Pacific Southwest on the basis of the transfer manifest which is delivered to the Pacific Southwest ticket counter. After receipt of the transfer manifest, Pacific Southwest prepares its exchange order showing the number of passengers and the fare due from U. S. Aircoach. U. S. Aircoach is allowed a commission for each passenger transferred to Pacific Southwest which reduces the net fare paid by U. S. Aircoach on each passenger transferred. As the transportation tax is collected from the passengers for transportation from the point of origination outside of California through to the final destination in California, Pacific Southwest does not collect any transportation tax on the passenger from the point of transfer (Burbank) to the final destination in California. A tax certification form is signed by the delivering carrier (U. S. Aircoach) signifying that this tax has already been collected. This protects Pacific Southwest from any liability in connection with the tax on the continuing part of the

trip from Burbank to San Diego or Oakland. This form refers to the delivering carrier (U. S. Aircoach) as the primary carrier and to Pacific Southwest as the sub-hauler. A copy of this form, supplied by Mr. Hutcheson, is attached as Exhibit 1.

Affiant's examination of U. S. Aircoach's records for the period between August 14 and September 28, 1953, including original passenger [18] manifests, transfer manifests, flight tickets, Pacific Southwest exchange orders, and payment checks to Pacific Southwest Airlines, discloses the following with respect to the transfer of interstate passengers at Burbank from U. S. Aircoach to Pacific Southwest.

U. S. Aircoach Flight No.	Arrival Date At Burbank 1953	No. Persons Transferred	Date of Transfer	Pacific Southwest Flight No.	Destination
1. 814W	August 15	1	August 15	90	San Diego
2. 818W	August 19	2	August 19	90	San Diego
3. 818W	August 19	4	August 19	11	Oakland
4. 824W	August 25	8	August 25	90	San Diego
5. 824W	August 25	22	August 25	11	Oakland
6. 828W	August 29	1	August 29	90	San Diego
7. 906W	Sept. 7	2	Sept. 7	90	San Diego
8. 909W	Sept. 10	1	Sept. 10	12	San Diego
9. 913W	Sept. 14	1	Sept. 14	90	San Diego
10. 913W	Sept. 14	3	Sept. 14	11	Oakland
11. 917W	Sept. 18	16	Sept. 18	11	Oakland
12. 917W	Sept. 18	4	Sept. 18	10	San Diego
13. 923W	Sept. 24	3	Sept. 24	90	San Diego
14. 923W	Sept. 24	5	Sept. 24	81	Oakland
15. 927W	Sept. 28	2	Sept. 28	90	San Diego

Affiant made photostatic copies of the documents with respect to several representative flights involving transfers of interstate passengers at Burbank from U. S. Aircoach to Pacific Southwest.

These documents are attached hereto as Exhibits 2 through 7. Each of these exhibits consists of (1) the passenger manifest of the U. S. Aircoach flight on which the passengers were transported from points outside the State of California to Burbank; (2) the flight coupons of tickets purchased by passengers for their flights from such points outside the State of California to their ultimate destination in the State of California; (3) the transfer manifest for the continuing transportation on Pacific Southwest of the passengers from Burbank to their final destination in California, and (4) [19] the Pacific Southwest exchange order purchased by U. S. Aircoach from Pacific Southwest to provide the continuing transportation of the passengers.

For example, the documents comprising Exhibit 2 establish that 12 passengers who were flown from Burbank to Oakland on Pacific Southwest Flight 11 on August 25, 1953, were transported to Burbank from various points outside of California on U. S. Aircoach Flight 824W. Thus, Exhibits 2(a) and 2(b) are passenger manifests showing that passengers Cate, Kneeland, Thompson, Heebnel, Moran, Horton, Flannery, and Hope were transported from New York to Burbank on U. S. Aircoach Flight 824W, which departed New York on August 24, 1953. Exhibit 2(c) is a passenger manifest showing that passengers Boyle and Torries were transported from Philadelphia to Burbank on U. S. Aircoach Flight 824W, which departed Philadelphia the same day. Exhibit 2(d) is a passenger manifest

showing that passengers Williams and Hand were transported from Chicago to Burbank on U. S. Aircoach Flight 824W, also departing Chicago the same day. Copies of the U. S. Aircoach flight coupons for these 12 passengers are included in Exhibits 2(a) through 2(d). These show that the passengers were issued tickets covering their transportation from their points of origin on U. S. Aircoach Flight 824W to Oakland, their final destination. Upon arrival of U. S. Aircoach Flight 824W at Burbank, these passengers were transferred to Pacific Southwest Airlines Flight 11 of August 25, 1953, for their continuing transportation to Oakland as shown by Exhibit 2(e) which includes a copy of the transfer manifest of U. S. Aircoach and the Pacific Southwest Exchange Order purchased by U. S. Aircoach for the continuing transportation of these 12 passengers from Burbank to Oakland by Pacific Southwest. A penciled notation at the top of the Exchange Order shows that U. S. Aircoach made payment to Pacific Southwest for the transportation of these 12 passengers by Check number 2660 on August 25, 1953.

7. On October 1, 1953, affiant visited the office of North American at Lockheed Air Terminal, Burbank, and interviewed Mr. Jack Wootton, the agent in charge, with respect to the transfer of interstate passengers by [20] North American to Pacific Southwest.

Mr. Wootton stated that North American operates its own shuttle flights between Burbank and

Oakland and Burbank and San Diego if aircraft is available and there is a sufficient passenger load; otherwise, the Oakland and San Diego passengers are transferred to either Pacific Southwest or California Central Airlines.

The procedure for transferring interstate passengers from North American to Pacific Southwest as explained by Mr. Wootton, is as follows: Normally, North American has two inbound flights arriving in Burbank at about 9 a.m. These are Flight 600, which arrives from New York via Dallas, and Flight 201, which arrives from New York via Chicago. North American, in advance of the flight arrivals, prepares an Operation Advisory Sheet, Form M 9. This shows what provisions are to be made for passengers continuing from Burbank to other points in California. If North American has a sufficient passenger load and aircraft available, the San Diego and Oakland flights will be shown together with the N C members of the aircraft scheduled for the operation of these flights. Otherwise, if the continuing flights are not to be operated, the advisory sheet will note that the continuing passengers are to be off-spaced. In that event, Mr. Wootton checks with both California Central Airlines and Pacific Southwest to see what flights they have available and to determine whether they have sufficient space to accommodate the continuing North American passengers. If the flight and space are available, Mr. Wootton then blocks off a number

of seats equivalent to the number of continuing passengers on whichever carrier can accommodate them. Usually the North American stewardess prepares the transfer manifest for the passengers on her flight prior to arrival in Burbank. However, sometimes this manifest is not made up by the stewardess and Mr. Wootton then prepares it after the arrival of the flight. When the passengers check in at the North American ticket counter he examines the passengers' incoming flight tickets. If the ticket is for a one-way trip, Mr. Wootton validates the passenger receipt coupon with a North American Stamp, returns this to the passenger, and instructs him to check [21] in at the Pacific Southwest or California Central ticket counter. If the passenger holds a round-trip ticket which contains a return flight coupon, Mr. Wootton prepares a North American exchange order which is given to the passenger. The passenger then checks with Pacific Southwest or California Central, as the case may be, and submits the validated passenger receipt or exchange order covering his continuing transportation in California.

Affiant examined the records of North American for August and September, 1953, and found numerous instances of westbound transeontinental flights involving transfers of passengers at Burbank from the North American carriers to Pacific Southwest for onward transportation to San Diego and Oakland. Affiant made photostatic copies of the documents with respect to several flights. These

documents are attached hereto as Exhibits 8 through 10 and show the following:

(1) Exhibit 8 includes the passenger manifests of North American Flight 201 which list the name of 2 passengers from New York (LaGuardia Airport) and 4 passengers from Chicago who departed from these cities for Burbank on September 21, 1953. Copies of the tickets issued to these passengers show that they covered transportation from the above points of origin to the final destination, San Diego. Upon arrival of Flight 201 in Burbank on September 22, 1953, the 6 passengers were transferred to Pacific Southwest Flight 12 for their continuing transportation to San Diego. This transportation was purchased from Pacific Southwest Airlines by an exchange order which was issued to North American Airlines.

(2) Exhibit 9 includes passenger manifests of North American Flight 600 which show the names of 1 passenger from New York (La Guardia Airport) [22] and 1 passenger from Dallas, Texas, who departed from these cities for Burbank on August 29, 1953. Copies of the tickets issued to these passengers show that they covered transportation from the above points of origin to the final destination, San Diego. Upon arrival of Flight 600 in Burbank on August 30, 1953, the 2 passengers were transferred to Pacific Southwest Airlines Flight 12 for their continuing transportation to San Diego. This transportation was purchased

from Pacific Southwest by an exchange order which was issued to North American Airlines.

(3) Exhibit 10 is a passenger manifest of North American Flight 201 which lists the names of 19 passengers who departed Chicago for Burbank on August 28, 1953. Upon arrival in Burbank, these passengers were transferred to a flight of Pacific Southwest for their continuing transportation to Oakland as indicated in the footnote at the bottom of the manifest.

/s/ JOSEPH W. STOUT, JR.

Subscribed and sworn to before me this 29th day of April, 1954.

[Seal] /s/ LOUISE S. MYERS,
Notary Public, Washington,
D. C.

Commission expires 1-14-58. [23]

[Title of District Court and Cause.]

AFFIDAVIT

City of Washington,
District of Columbia—ss.

Robert F. Rickey, being first duly sworn, deposes and says that:

1. He is, and was at all times herein mentioned, employed by the Civil Aeronautics Board as an Air Transport Examiner.

2. Investigation by affiant of a number of Pacific Southwest Airlines (PSA) flights arriving at Lockheed Air Terminal, Burbank, from San Diego during November and December, 1953, disclosed that PSA Flight 65, arriving at 7:50 p.m., is the flight most generally used by San Diego ticket agents to connect their interstate passengers with the eastbound transcontinental flights of Large Irregular Carriers operating from Lockheed Air Terminal. For the most part, the transcontinental passengers traveling on PSA from San Diego to Burbank are transferred at Burbank to the so-called North American carriers, consisting of Hemisphere Air Transport, Trans American Airways, Inc.; Trans National Airlines, Inc.; Twentieth Century Airlines, Inc., and the Unit Export Company, Inc., and the Skycoach carriers, consisting of Currey Air Transport Ltd., and Great Lakes Airlines, Inc. Some of such passengers, however, are routed via other Large Irregular Carriers represented by the American Air Bus Agency, including U. S. Aircoach, Peninsular Air Transport, Aero Finance Corporation, Air Services, Inc., and Caribbean American Lines, Inc. On every arrival of Flight 65 observed by affiant, there were several or more passengers who, after claiming their luggage, checked in for the eastbound transcontinental flights on one of the Large Irregular Carriers. The following are representative flights:

a. On December 1, 1953, eight passengers from a total of 17 leaving Flight 65 [55] at Burbank checked in at the North American, Skycoach and

American Air Bus counters after first claiming their luggage in front of the Terminal Building.

b. On December 2, 1953, six passengers arriving from San Diego on Flight 65 held North American tickets for continuing interstate transportation and two passengers from the same flight were later observed checking in at the Skycoach counter. A total of 17 passengers left Flight 65 at Burbank.

c. On December 10, 1953, 17 passengers deplaned from Flight 65 at Burbank of which five later checked in at the North American counter and three at Skycoach for eastbound flights that night.

3. On November 24, 1953, affiant interviewed Mrs. A. J. Phillips, 2562 Weller Avenue, Baton Rouge, Louisiana, who had arrived at Lockheed Air Terminal from San Diego on PSA Flight 65 and, after claiming her baggage, checked in at the North American counter for North American Flight 500 to Dallas, Texas. An examination of her ticketing disclosed the following: Her North American ticket was OW-1 46109 and was validated "R. A. Ashment Nov 1953 San Diego." The ticket showed a routing of San Diego-Burbank-Dallas and a fare of \$54.55 plus \$8.18 Federal tax or a total of \$62.73. Although it was not shown on the North American ticket, this included the cost of PSA ticket No. 94133 from San Diego to Burbank, which ticket was issued in conjunction with the North American ticket. The North American ticket had been stamped at the check-in

counter, "Hemisphere Air Transport, Municipal Airport, Long Beach, California," to indicate the name of the carrier whose aircraft was being used for Flight 500 that night. Mrs. Phillips' receipt portion of her PSA ticket, attached hereto as Exhibit 1, was stapled to the North American ticket. Mrs. Phillips stated that the two tickets had been stapled together when purchased in San Diego and were presented in that form to PSA when the flight coupon of the PSA ticket was lifted by PSA.

4. On December 2, 1953, affiant made an inspection of tickets for North American's Flight 101 of the previous evening. Affiant noted that on many of the North American tickets issued in San Diego there was a PSA or a California Central Airlines ticket number written in the "Conjunction Ticket" box of the North American ticket. The following is information on four such tickets against which PSA "conjunction tickets" were issued: [56]

a. North American ticket No. OW-145995 was issued to Miss T. Gaston, 2508 Oxford Street, Middleton, Ohio, for transportation from San Diego to Chicago on NAA Flight 101 of December 1, 1953, for \$75.00 plus \$11.25 tax or a total of \$86.25. The ticket was validated by Pacific Travel Service, 4065 Pacific Highway, San Diego, on November 30, 1953. Written in the "Form" box under "Conjunction Ticket" was PSA and in the "Serial" box the number "93658." This means that PSA ticket number 93658, in addition to the above North American ticket, was issued

to Miss Gaston by Pacific Travel Service for transportation from San Diego to Burbank.

b. North American ticket No. OW-1 46053 was issued to K. G. Norton, 505 East 74th Street, Chicago, Illinois, for transportation from San Diego to Washington, D. C., on NAA Flight 500 of December 1, 1953 (this flight was consolidated with Flight 101 on December 1). The fare shown on the ticket was \$102.55 plus \$15.38 or a total of \$117.93. It was validated "Nov. 17, '53 S. D." by Agent B. Thompson in North American's San Diego Office. On the ticket is noted "PSA 94274" which is the conjunction ticket issued for San Diego-Burbank transportation via PSA.

c. North American ticket No. OW-1 46213, issued to Robert E. Draine, 331 South Monroe Street, Rushville, Illinois, was made out for transportation from San Diego to Chicago at a fare of \$75.00 plus \$11.25 Federal tax or a total of \$86.25. This ticket was validated "Dec. 1, 1953 SD" by North American's San Diego office. Conjunction ticket issued for San Diego-Burbank transportation was PSA 94592 and was so noted on the North American ticket.

d. North American ticket No. OW-1 46258, validated "Dec. 1, '53 S.D." at North American's San Diego Office, was issued to H. E. Reveron, 132 West 63rd Street, New York City, for San Diego-New York transportation at a fare of \$99.00 plus \$14.85 tax or a total of \$113.85. The "Conjunction Ticket" noted on this ticket was PSA 94591 which was for the San Diego-Burbank portion of the trip.

5. During a later check of North American tickets in the North American office on December 14, 1953, affiant made a photostatic copy, attached hereto as Exhibit 2, of a representative North American ticket issued in conjunction with a Pacific Southwest San Diego-Burbank ticket. This North American ticket, OW-1 46467, was issued to R. Umlauf for San Diego-New York transportation and bears the notation "PSA 94975" which is the number of the PSA conjunction ticket used for [57] San Diego-Burbank transportation.

6. Affiant's investigation also disclosed that ticket agents in the Oakland-San Francisco area occasionally use PSA's Flight 64 arriving in Burbank at 9:10 p.m. from Oakland and San Francisco, to connect their interstate passengers with the eastbound transcontinental flights of the Large Irregular Carriers operating out of Lockheed Air Terminal. However, because the North American, Skycoach and American Air Bus carriers frequently operate their own shuttle service to connect with their eastbound flights, interstate traffic on PSA from Oakland and San Francisco is much lighter than from San Diego where shuttles are seldom operated by the Large Irregular Carriers.

7. On December 17, 1953, affiant visited the Office of Airline Tickets, Inc., and interviewed Mr. Alex Davidson. Airline Tickets primarily represents the so-called American Air Bus transcontinental air carriers, in addition to PSA and California Central Airlines, and sells San Diego-Burbank

tickets on PSA or California Central in conjunction with eastbound tickets on the Large Irregular Carriers. Airline Tickets has established an inter-branch bank account with PSA so that, when a PSA ticket is sold by Airline Tickets, the amount of the ticket less the commission is deposited in this special account and is then transferred to the PSA account by the bank. Attached hereto as Exhibits 3, 4 and 5 are photostatic copies of representative daily ticket sales and collection reports of Airline Tickets showing sales of interstate transportation on PSA. In each of these reports, the PSA San Diego-Burbank ticket issued in conjunction with a "YY" or "ZZ" form ticket (issued by Airline Tickets principally for transportation on the American Air Bus Carriers) is so noted in the "Remarks" column of the report. Thus, Exhibit 3, the report for December 9, 1953, shows that PSA Ticket No. 94902 was sold to Mr. Winters on a PSA flight from San Diego to Burbank for December 20. Under "Remarks" is the comment, "Shuttle YY-27267." Farther up the page, the sale of ticket YY 27267 to Mr. Winters is reported. This ticket, also for December 20, is for transportation from San Diego to Chicago. Exhibit 4, the report for December 16, 1953, shows that Mr. and Mrs. Wescott were sold PSA San Diego-Burbank tickets for December 15 in conjunction with "YY" tickets, also for December 15, from San Diego to Kansas City, Kansas (KCK); and that Mr. Hannan was sold a PSA San Diego-Burbank ticket for December [58] 19 in conjunction with a "YY" ticket, also for December 19, from San Diego to

New York, N. Y. (LGA). Exhibits 5a and b, the report for December 17, shows that E. McLaughlin, S. E. Beasley, A. Krom, and R. E. Bernard were sold PSA San Diego-Burbank tickets in conjunction with "YY" and "ZZ" tickets for transportation to New York, N. Y., Washington, D. C., and return, Chicago, Illinois, and return, and Chicago, Illinois, respectively.

7. On December 15, 1953, affiant made a telephone call to the office of Transocean Air Lines, a ticket agent representing the Skycoach carriers, California Central Airlines, and PSA, for a reservation on Skycoach from San Diego to Chicago for December 17. The telephone was answered by Mr. Frank S. Ambler, who informed affiant that transportation from San Diego to Burbank would be via either California Central Airlines or PSA. On December 17, Mr. Ambler sold to affiant "Skycoach" ticket Z No. 101293, reading "San Diego to Chicago" and a PSA ticket for transportation from San Diego to Burbank. Photostatic copies of both tickets are attached hereto as Exhibit 6. The PSA ticket was stapled inside the jacket of the Skycoach ticket so that both were visible when the jacket was opened. The reverse side of the PSA ticket, attached hereto as Exhibit 7, bore the following notation:

"Pacific Southwest Airlines is engaged in Scheduled Intrastate common carriage transportation of passengers by air Exclusively within the State of

California. The company declines to carry any passenger who is traveling from or to a point outside of California and who desires to use a flight of Pacific Southwest Airlines for a portion of such interstate journey. The company reserves the right to cancel this ticket and to refund the purchase price therefor, if, within the sole discretion of the company, it appears that this ticket will be used by a person for transportation as a part of a trip which originates or terminates at any point outside of California."

Mr. Ambler stated at the time the ticket was purchased that the PSA space on Flight 715 had not yet been positively confirmed but that he was certain it would clear and he would call affiant by 2:00 p.m. He phoned affiant at his hotel at 11:50 a.m. with positive confirmation of the PSA space on Flight 715 to Burbank that evening. He further advised that affiant should check in at the PSA counter [59] at Lindbergh Field (San Diego) no later than 6:45 p.m., that the flight would leave at 7:15 p.m., make one stop at Long Beach and then go to Burbank, and that at Burbank affiant would have to claim his luggage and take it to the Skycoach counter to check in for the Burbank-Chicago flight, which flight would leave Burbank at 9:30 p.m. and arrive in Chicago at approximately 9:00 a.m. C.S.T. the following morning. Affiant arrived at Lindbergh Field at 5:55 p.m. and checked in at the PSA counter for Flight 715. He asked the PSA check-in agent about the printing on the reverse side of the ticket regarding PSA's right to refuse passage to interstate pas-

sengers. The PSA agent laughed and said affiant should have no concern over this since it was "an entirely different deal." He added that the ticket form was an old one printed some time ago which they were still using and that the notice printed thereon would not apply to affiant. The agent warned affiant that he would have to claim his luggage upon arrival at Burbank and recheck it at the Skycoach counter when he checked in for the Burbank-Chicago flight. Affiant boarded the PSA aircraft at 7:15 p.m. Before the flight left the ground at San Diego, the hostess asked affiant when she checked his coat how far he was going. Affiant replied "Chicago" and she said he would then leave this flight at Burbank. After the flight was airborne, the hostess collected tickets. Affiant's was presented to her still stapled inside the jacket of the Skycoach ticket to Chicago just as it had been presented at the check-in counter in San Diego. Nothing was said about affiant's being an interstate passenger. There were several other passengers on this flight holding Skycoach tickets.

/s/ ROBERT F. RICKEY.

Subscribed and sworn to before me this 29th day of April, 1954.

[Seal] /s/ LOUISE S. MYERS,
Notary Public, D. C.

My commission expires: 1/14/58. [60]

[Title of District Court and Cause.]

AFFIDAVIT

City of Washington,
District of Columbia—ss.

John W. Chambers, being first duly sworn, deposes and says that:

1. He is, and was at all times herein mentioned, employed by the Civil Aeronautics Board as an Air Transport Examiner.

2. During the period between January 25, 1954, and February 12, 1954, affiant personally conducted an investigation with respect to the transportation of interstate passengers by Pacific Southwest Airlines (PSA).

3. On January 25, 1954, affiant visited the ticket counter of Skycoach Airlines Agency, Inc., at Midway Airport, Chicago, Illinois, and interviewed Mr. John Davy, the Skycoach manager, with respect to Skycoach's handling of passengers destined for Oakland and San Diego, California. Mr. Davy furnished affiant the following information: Skycoach is a ticket agency representing Great Lakes Airlines, Inc., and Currey Air Transport, Inc., two Large Irregular Carriers engaged in the interstate air transportation of passengers between New York, New York; Washington, D. C.; Chicago, Illinois; Kansas City, Kansas, and other intermediate points, and Burbank, San Diego, and Oakland, California. All Skycoach flights terminate at Burbank. Every

passenger's ticket is made out to show his ultimate destination in California. The passenger manifest shows every passenger's destination in California as Burbank. However, if the passenger is going to Oakland, one asterisk is placed after the destination (BUR*), and if the passenger is going to San Diego two asterisks are used (BUR**). Immediately after departure of the Skycoach flight from Chicago, the agent on duty calls Skycoach in Kansas City giving them a complete breakdown as to the number [69] of passengers and their destination. After the plane departs Kansas City, the agent there calls Burbank with the same information and the agent in Burbank then requests PSA to block off a sufficient number of seats on their flight to accommodate the Skycoach passengers bound for San Diego. Mr. Davy did not know which carrier was used to handle the Oakland passengers.

4. On February 5, 1954, affiant visited the offices of Great Lakes Airlines, Inc., at Lockheed Air Terminal, Burbank, and interviewed Mrs. Ida Mae Hermann, Secretary-Treasurer of Great Lakes, with respect to the handling of passengers destined for San Diego and Oakland. Mrs. Hermann confirmed the information supplied to affiant by Mr. Davy with respect to the handling of San Diego passengers. As to Oakland passengers, she informed affiant that, when the passenger load warranted it, Great Lakes continued its flight to Oakland or used a DC-3 aircraft to shuttle such passengers to Oakland. When the number of passengers was insuffi-

cient to warrant the continuation of the original flight or a DC-3 shuttle flight, Great Lakes transferred the Oakland passengers to PSA or California Central. Mrs. Hermann also described to affiant the transfer procedures used by Great Lakes, which are substantially the same as those used by U. S. Aircoach and are described in paragraphs 5 and 6 of the Stout affidavit. Mrs. Hermann provided affiant with Great Lakes Airlines records showing the transfer of passengers from Great Lakes interstate flights to Pacific Southwest's flights for the following periods: October 5 through October 9, 1953; November 20 through November 30, 1953, and December 14 through December 20, 1953. These records included the transfer manifest prepared by Great Lakes Airlines and the exchange order prepared by Pacific Southwest Airlines. These records disclosed the following with respect to the transfer of interstate passengers at Burbank from Great Lakes to Pacific Southwest.

Great Lakes Flight No.	Arrival Date At Burbank	No. Persons Transferred	PSA Flight No. and Date	Destination
410	October 5	2	90-Oct. 5	San Diego
610	October 7	5½	90-Oct. 7	San Diego
810	October 9	4	90-Oct. 9	San Diego
1911	November 20	23	90 & 22 Nov. 20	San Diego
2511	November 26	5	90-Nov. 26	San Diego
2911	November 30	9	90-Nov. 30	San Diego
1512	December 16	4	902-Dec. 16	San Diego

Affiant made photostatic copies of the documents involved in the above transfers. These photostats are attached as Exhibits 1a through 7b. Each ex-

hibit consists of (1) the transfer manifest prepared by Great Lakes for Pacific Southwest showing the names of the passengers being transferred from Great Lakes interstate flight to Pacific Southwest for transportation from Burbank to their final destination in California, (2) the Pacific Southwest exchange order purchased by Great Lakes from Pacific Southwest to provide the continuing transportation of the passengers, and (3) the Pacific Southwest manifest for the flight to which the passengers were transferred. (This latter document was photostated in the offices of Pacific Southwest.)

For example, the documents comprising Exhibit 1 establish that 2 passengers who were flown from Burbank to San Diego on Pacific Southwest flight 90 on October 5, 1953, were transported to Burbank from outside of California on Great Lakes Airlines flight 410. Thus, Exhibit 1a is the transfer manifest showing that passengers Friend and Bledsoe were transported to Burbank on Great Lakes Airlines flight 410 which according to their flight report originated in New York on October 4, stopped in Philadelphia and Chicago and arrived in Burbank on October 5. The exchange order on Exhibit 1a was purchased by Great Lakes from Pacific Southwest for the continuing transportation of these two passengers. The notation in upper right hand corner of the exchange order shows that Great Lakes made payment to Pacific Southwest for the transportation of these two passengers on October 5, 1953, with

Check Number 5159. Exhibit 1b is the Pacific Southwest manifest for their flight 90 on October 5, 1953, from Burbank to San Diego showing the names of Friend and Bledsoe as passengers on the flight.

5. On February 12, 1954, affiant visited the office of Currey Air Transport, Inc., at Lockheed Air Terminal at Burbank and interviewed Miss Tillie Gamble, operations agent for that carrier. Miss Gamble confirmed the fact that [71] Currey used PSA for the transfer at Burbank of interstate passengers destined for San Diego and Oakland.

Affiant's examination of Currey Air Transport records including original passenger manifests, transfer manifests, and Pacific Southwest exchange orders for the period from October 1, 1953, through January 26, 1954, disclosed that passengers were transferred at Burbank from Currey Air Transport's interstate flights to the flights of Pacific Southwest Airlines as follows:

Currey Air Transport Flight No.	Arrival Date At Burbank	No. Persons Transferred	PSA Flight and Date	Destination
210	October 3	2	11	Oakland
510	6	2	90	San Diego
710	8	6	11	San Diego
710	8	12	81	Oakland
910	10	1	81	Oakland
910	10	5	90	San Diego
1110	12	2	12	San Diego
1310	14	6	90	San Diego
1310	14	7	81	Oakland
1510	16	4	90	San Diego
1510	16	1	25	Oakland
1710	18	6	12	San Diego
1910	20	24	125	Oakland

Currey Air Transport Flight No.	Arrival Date At Burbank	No. Persons Transferred	PSA Flight and Date	Destination
1910	20	4	90	San Diego
1910	20	1	45	Oakland
2110	22	11	90	San Diego
2310	24	6	90	San Diego
2410	25	5	12	San Diego
2410	25	1	11	San Francisco
2510	26	3	11	San Francisco
2510	26	7	90	San Diego
2610	27	4	90	San Diego
2710	28	1	90	San Diego
2710	28	4	11	Oakland
2910	30	15	90	San Diego
3010.	31	6	90	San Diego
111	November 2	5	10	San Diego
111	2	5	11	Oakland
211	3	1	90	San Diego
511	6	4	105	Oakland
511	6	3	90	San Diego
611	7	1	65	Oakland
611	7	4	90	San Diego
711	8	3	12	San Diego
811	9	3	64	San Diego
911	10	4	90	San Diego
911	10	4	11	Oakland
1011	11	6	90	San Diego
1111	12	3	90	San Diego
1111	12	2	11	Oakland
1411	15	5	12	San Diego
1611	17	9	75	Oakland
1711	18	5	90	San Diego
2211	23	2	10	San Diego
2211	23	1	10	San Diego
511	November 6	4	105	Oakland
511	6	3	90	San Diego
611	7	1	65	Oakland
611	7	4	90	San Diego
711	8	3	12	San Diego
811	9	3	64	San Diego
911	10	4	90	San Diego
911	10	4	11	Oakland

Currey Air Transport Flight No.	Arrival Date At Burbank	No. Persons Transferred	PSA Flight and Date	Destination
1011	11	6	90	San Diego
1111	12	3	90	San Diego
1111	12	2	11	Oakland
1411	15	5	12	San Diego
1611	17	9	75	Oakland
1711	18	5	90	San Diego
2211	23	2	10	San Diego
2211	23	1	10	San Diego
412	December 5	3	90	San Diego
612	7	6	31-65	Oakland
612	7	4	10	San Diego
1812	19	1	902	San Diego
1812	19	8	902	San Diego
1812	19	10	101-111	Oakland
2012	21	11	902	San Diego
2212	23	3	902	San Diego
2612	27	2	90	San Diego
2712	28	9	902	San Diego
2812	29	7	902	San Diego
3012	31	18	90	San Diego
11	January 2	121½	902	San Diego
21	3	1	90	San Diego
31	4	12	902	San Diego
41	5	12	101	Oakland
41	5	4	902	San Diego
51	6	16	745	Oakland
71	8	22	105	Oakland
111	12	4	902	San Diego
131	14	11	232	San Diego
141	15	8	105	Oakland
161	17	3	105	Oakland
181	19	4	111	Oakland
211	22	21	745	Oakland
211	22	1	105	Oakland
211	22	11	902	San Diego
231	24	4	202	San Diego
251	26	9	232	San Diego

Affiant made photostatic copies of the documents of several representative flights involving transfers at Burbank of interstate passengers from Currey Air Transport to Pacific Southwest. Affiant also made photostatic copies of the manifests of the Pacific Southwest flights involved. These documents have been matched together and are attached hereto as Exhibits 8a through 16f. Each of these exhibits consists of (1) the passenger manifest(s) of the Currey Air Transport flight on which the passengers were transported from points outside [73] the State of California, (2) the transfer manifest for the continuing transportation on Pacific Southwest of the passengers from Burbank to their final destination in California, (3) the Pacific Southwest exchange order purchased by Currey Air Transport from Pacific Southwest to provide the continuing transportation of the passengers and (4) the Pacific Southwest passenger manifest of the flight to which the passengers were transferred. For example, the documents comprising Exhibit 11 establish that 11 passengers who were flown from Burbank to San Diego on PSA flight 90 on October 22, 1953, were transported to Burbank from points outside of California on Currey Air Transport flight 2110. Thus, Exhibit 11a is a passenger manifest showing that passengers Castro, Degon, Green, Peniston and Rivers were transported from New York to Burbank on Currey Air Transport flight 2110 which departed New York on October 21, 1953. Exhibit 11b shows that passengers Smith, Morris and Marsh were transported from Philadelphia to Burbank on the same flight.

Exhibit 11c shows that passengers Kromjac, Bilbert and Grieder were transported from Chicago to Burbank on the same flight.

On arrival of Currey Air Transport flight 2110 in Burbank on October 22, these passengers were transferred to Pacific Southwest Airlines flight 90 of October 22 for their continuing transportation to San Diego as shown by Exhibit 11d, which is a copy of the transfer manifest of Currey Air Transport and the Pacific Southwest exchange order purchased by Currey Air Transport for the continuing transportation of these 11 passengers from Burbank to San Diego by Pacific Southwest. The notation at the top of the exchange order shows that Currey Air Transport made payment to Pacific Southwest for transportation of these 11 passengers by Check Number 1705 on October 23, 1954.

Exhibit 11e is a photostat of the Pacific Southwest Airlines Passenger Manifest for flight 90 on October 22 from Burbank to San Diego which shows the names of these 11 passengers.

6. On January 29, 1954, affiant visited the offices of U. S. Aircoach at Lockheed Air Terminal, Burbank, and interviewed Mr. Fritz Hutcheson, the president of U. S. Aircoach, with respect to the transfer of passengers continuing beyond Burbank to San Diego and Oakland. Mr. Hutcheson furnished affiant substantially the same information as he furnished Joseph W. Stout Jr., (See Stout [74] affidavit, Paragraphs 5 and 6) with respect to the U. S. Aircoach's use of PSA to provide onward

transportation from Burbank for its San Diego and Oakland passengers and the method for accomplishing the transfer of such passengers to PSA.

While in U. S. Aircoach's office, affiant conducted an examination of transfer manifests issued to Pacific Southwest and exchange orders from Pacific Southwest for the period from October 1, to November 8, 1953. This examination disclosed the following with respect to the transfer of interstate passengers at Burbank from U. S. Aircoach to Pacific Southwest.

U.S. Aircoach Flight No.	Arrival Date At Burbank	No. Persons Transferred	PSA Flight & Date	Destination
1004W	October 5	1	90-Oct. 5	San Diego
108W	9	4	12-Oct. 9	San Diego
108W	9	16	11-Oct. 9	Oakland
1018W	19	2	90-Oct. 19	San Diego
1026W	27	4	90-Oct. 27	San Diego
1103W	November 4	3	90-Nov. 4	San Diego
1103W	4	7	11-Nov. 4	Oakland
116W	7	6	31-Nov. 7	Oakland

Affiant made photostatic copies of the transfer manifests and exchange orders involved in the above transfers. Later, while in the offices of Pacific Southwest Airlines, affiant made photostatic copies of the manifests of the Pacific Southwest flights to which these passengers were transferred. These photostats have been assembled to illustrate the complete transaction and are attached as Exhibits 17a through 24c. For example, the documents comprising Exhibit 18 establish that 4 passengers who were flown from Burbank to San Diego on Pacific Southwest

flight 12 on October 9, 1953, were transported to Burbank from various points outside of California on U. S. Aircoach flight 108W. Thus, Exhibit 18a is a transfer manifest showing that passengers Gloster and Kettel originated in New York, passenger Sagan in Philadelphia and passenger George in Chicago and that all 4 are destined for San Diego. Exhibit 18b shows the exchange order from Pacific Southwest billing U. S. Aircoach for having transported these 4 passengers from Burbank to San Diego. Exhibit 18c is the Pacific Southwest passenger manifest for flight 12 on October 9, 1953, from Burbank to San Diego showing on lines 1, 2, 6 and 8, the same 4 names that appear on the transfer manifest.

7. On January 26, 1954, at approximately 9:15 a.m., CST, affiant visited the [75] office of North American Airlines at 7 Washington Street, Chicago, Illinois, and interviewed Miss Kennedy, the agent on duty. North American Airlines is a ticket agency representing a number of Large Irregular Carriers, including Twentieth Century Airlines, Inc.; Trans National Airlines, Inc.; Trans American Airways, Inc.; Hemisphere Air Transport, and Unit Export Company, Inc. These carriers are engaged in interstate air transportation between New York, Washington, D. C., Chicago and various other intermediate points and Burbank, San Diego and Oakland, California. Affiant inquired with respect to North American flights to San Diego and was informed that there was a daily flight to San Diego departing Chicago at 11:15 p.m. and arriving at San Diego at

12 noon the following day. Affiant then inquired whether this was a through flight and was informed that affiant would have to change to PSA at Burbank but that the fare of \$77.63 quoted by North American included the portion of the trip from Burbank to San Diego.

8. On February 1, 1954, affiant observed the arrival from New York of North American Airlines flight 201, at the Lockheed Air Terminal, Burbank, California. Passengers from this flight picked up their luggage at Baggage Area #5 on the street side of the terminal. At least 12 of these passengers then checked in at PSA counter. The agent on duty at that counter removed the pink "San Diego" baggage tags used on the North American flight and replaced them with red PSA tags. At approximately 2:30 p.m., affiant saw 13 passengers board PSA flight 114 for Long Beach and San Diego. Twelve of these passengers were those who had deplaned from the North American flight.

9. On February 4, 1954, affiant visited the office of PSA at Lindbergh Field, San Diego, and interviewed Mr. Kenneth G. Friedkin, president of PSA, with respect to the handling of interstate passengers by PSA. Affiant sought an explanation for the apparent large number of interstate passengers carried by PSA to and from points outside the State of California. Mr. Friedkin admitted that he was receiving interstate passengers from Large Irregular Carriers and transferring interstate passengers to such large irregular carriers but stated that, in his

opinion, such activity was not improper so long as he did not fly his aircraft outside of the state and did not issue through tickets to such interstate passengers. [76]

/s/ JOHN W. CHAMBERS.

Subscribed and sworn to before me this 29th day of April, 1954.

/s/ LOUISE S. MYERS,

Notary Public,

Washington, D. C.

My Commission Expires 1-14-58. [77]

[Title of District Court and Cause.]

AFFIDAVIT

City of Washington,
District of Columbia—ss.

John B. Flynn, being first duly sworn, deposes and says that:

1. He is, and was at all times herein mentioned, employed by the Civil Aeronautics Board as an Air Transport Examiner.

2. On September 28, 1953, affiant visited the ticket counter of Safeway Aircoach Agency, Inc., at the Midway Terminal, Chicago, Illinois, and interviewed Mr. Dick Brinker, the agent in charge. Mr. Brinker furnished affiant with the following information: Safeway acts as a ticket agent for four air

carriers registered with the Civil Aeronautics Board as Large Irregular Carriers, namely, Peninsular Air Transport, Aero Finance Corporation, U. S. Aircoach, and Regina Cargo Airlines, Inc. These air carriers are engaged in the interstate air transportation of passengers between New York, New York; Chicago, Illinois, and other intermediate points and Burbank, San Diego and Oakland, California. Through these air carriers, Safeway holds out to the public and provides a daily service from Chicago to Burbank, San Diego, and Oakland. The flights operated by these air carriers terminate at Burbank. Passengers destined for San Diego are routed from Burbank to San Diego via Pacific Southwest Airlines, and passengers destined for Oakland are routed from Burbank to Oakland on any available carrier, including Pacific Southwest Airlines and California Central Airlines, Inc.

3. On the same day, September 28, 1953, affiant visited the ticket office of North Star Aircoach at Midway Airport, Chicago, Illinois, and interviewed Mr. Edward Kustof, the North Star station manager. Mr. Kustof furnished affiant with the following information: North Star sells air transportation on a number [151] of air carriers registered with the Board as Large Irregular Air Carriers, including Paul Mantz Air Services, Air Services, Inc., Air America, Inc., and Caribbean American Lines, Inc. These air carriers are engaged in the interstate air transportation of persons between New York, Chicago, Kansas City, and other intermediate points.

and Burbank, San Diego, and Oakland, California. Through these air carriers, North Star provides a daily service from Chicago to Kansas City, Burbank, Oakland and San Diego. San Diego passengers, he said, are routed from Burbank to San Diego on Pacific Southwest Airlines.

/s/ JOHN B. FLYNN.

Subscribed and sworn to before me this 29th day of April, 1954.

[Seal] /s/ LOUISE S. MYERS,
Notary Public, Washington,
D. C.

My commission expires 1-14-58. [152]

[Title of District Court and Cause.]

AFFIDAVITS IN OPPOSITION TO ORDER
TO SHOW CAUSE RE PRELIMINARY
INJUNCTION [153]

[Title of District Court and Cause.]

AFFIDAVIT OF KENNETH G. FRIEDKIN
State of California,
County of San Diego—ss.

Kenneth G. Friedkin, being first duly sworn, deposes and states:

Affiant is the President of Friedkin Aeronautics, Inc., doing business as Pacific Southwest Airlines.

That in such capacity, affiant is familiar with all phases of the organization and operation of said Pacific Southwest Airlines.

That affiant has reviewed the following affidavits filed in the above-entitled action on behalf of defendant.

Affidavit of Kenneth G. Friedkin, May 15, 1954.

Affidavit of Victor R. Lundy, May 15, 1954.

Affidavit of J. F. Andrews, May 15, 1954. [154]

Affidavit of Hugh N. Wood, May 15, 1954.

Affidavit of Kenneth G. Friedkin, May 15, 1954.

Affidavit of James Fischgrund, May 13, 1954.

That affiant avers that the facts set forth in said affidavits are true and correct as of the present date, with the following exceptions:

Pacific Southwest Airlines does not presently serve the city of Long Beach, California.

The number of pilots and co-pilots now employed by Pacific Southwest Airlines is 12 pilots and 5 co-pilots.

The schedules attached to said affidavits and therein referred to as current have now been superseded by the schedule attached to this affidavit as Exhibit A hereto.

/s/ KENNETH G. FRIEDKIN,

Subscribed and sworn to before me this 10th day of July, 1954.

[Seal] /s/ ELEANOR F. GLITHERO,
Notary Public.

My commission expires October 10, 1954. [155]

[Title of District Court and Cause.]

AFFIDAVIT OF KENNETH G. FRIEDKIN

State of California,

County of San Diego—ss.

Kenneth G. Friedkin, being first duly sworn, deposes and states:

Affiant is a resident of the City and County of San Diego, State of California, and since May 6, 1949, to and including the present time, has served as the President of Friedkin Aeronautics, Inc., which during said period of time has been doing business as Pacific Southwest Airlines; that as President, affiant is familiar with all phases of the organization and operation of said Pacific Southwest Airlines, including the relationship of said company with various governmental regulatory bodies, both Federal and State; that Pacific Southwest Airlines, Inc., is an intrastate common carrier by air, operating pursuant to the rules and regulations of the Public Utilities Commission of the State of California; that the charges made for [157] passenger service are filed with said Commission; that said corporation has never been subjected to economic regulation by the Civil Aeronautics Board or the Interstate Commerce Commission.

That the routes over which Pacific Southwest Airlines presently operates, and over which the company has operated for the past four and one-half years, lie entirely within the State of California and consists of flights between the following cities in

said State: San Diego, Long Beach, Burbank, and San Francisco; that Pacific Southwest Airlines does not now, and never has, operated as a common carrier by air engaged in interstate or foreign commerce, and that it has never operated as a common carrier by air to any location in any other State or Country, other than the State of California.

That Pacific Southwest Airlines does not now, and never has, operated as a carrier by air transporting mail for or under contract with the United States Government; that said company serves as a passenger carrier only.

/s/ KENNETH G. FRIEDKIN,

Subscribed and sworn to before me this 15th day of May, 1954.

[Seal] /s/ ELEANOR F. GLITHERO,
Notary Public.

My commission expires October 10, 1954. [158]

[Title of District Court and Cause.]

AFFIDAVIT OF VICTOR R. LUNDY

State of California,
County of San Diego—ss.

Victor R. Lundy, being first duly sworn, deposes and states:

That he is Secretary-Treasurer of Friedkin Aeronautics, Inc., doing business as Pacific Southwest

Airlines, a California corporation. That the principal place of business of said corporation is Lindbergh Field, San Diego, California. That attached hereto are photostatic copies of the following documents:

1. Certificate No. 6-6-(C) of the Civil Aeronautics Administration, Department of Commerce, United States of America, certifying that Friedkin Aeronautics, Inc., doing business as Pacific Southwest Airlines, is authorized to operate as a commercial operator and to conduct common carrier operations carrying passengers intrastate on a schedule basis in [159] accordance with the conditions therein described.

2. Order of the Public Utilities Commission of the State of California authorizing Pacific Southwest Airlines to publish and file specific passenger fare rates with said Commission.

/s/ VICTOR R. LUNDY.

Subscribed and sworn to before me this 15th day of May, 1954.

[Seal] /s/ ELEANOR F. GLITHERO,
Notary Public.

My commission expires October 10, 1954. [160]

[Title of District Court and Cause.]

AFFIDAVIT OF J. F. ANDREWS

State of California,
County of San Diego—ss.

Affiant is a resident of the City and County of San Diego, State of California, and is employed as Chief of Operations of said company, and that in such capacity he is familiar with the schedules and the number of scheduled round-trip flights maintained by the company during 1954.

That the regularly scheduled service offered to the public by said company consists of round-trip flights between San Diego, Long Beach, Burbank and San Francisco. That a copy of the currently effective flight schedules maintained by said company is attached hereto marked Exhibit A and incorporated herein by reference. That said schedules indicate the cities or stations served by said company to be as hereinabove set forth. [164]

That the scheduled stops of said company do not include Oakland, California, or Oakland Municipal Airport, and that said company discontinued scheduled service to Oakland on or about March 31, 1954, and that no scheduled flights of said company have since that date transported passengers to or from Oakland, California, with the exception of a few flights for the convenience of passengers who had made reservations for Oakland prior to the discontinuance of this service.

That said company does not operate flights upon an unscheduled basis, except to the extent that extra sections may be operated on week ends or when traffic demands. That no flights of said company serve cities or airports other than those specified hereinabove and in the attached Exhibit A.

/s/ J. F. ANDREWS.

Subscribed and sworn to before me this 15th day of May, 1954.

[Seal] /s/ ELEANOR F. GLITHERO,
Notary Public.

My commission expires October 10, 1954. [165]

[Title of District Court and Cause.]

AFFIDAVIT OF HUGH N. WOOD

State of California,
County of San Diego—ss.

Hugh N. Wood, being first duly sworn, deposes and states:

Affiant is a resident of the City and County of San Diego, State of California, and is the Traffic and Sales Manager of Friedkin Aeronautics, Inc., doing business as Pacific Southwest Airlines and, acting in such capacity, is in charge of the Traffic and Sales Department of said company and is fully familiar with the extent and method in which tickets for passage on said airline are sold and distributed.

That said company has no agreement with any other airline company pursuant to which interstate passengers arriving from points outside the State of California on any of such airlines are transported by Pacific Southwest Airlines to their point of destination within the State of California or are transported by Pacific [166] Southwest Airlines to the terminals of any other such airline pursuant to any agreement.

That tickets for passage on Pacific Southwest Airlines are sold at the regularly established ticket offices operated by the company in the cities of San Diego, Long Beach, Los Angeles, Burbank, San Francisco, and that affiant has no knowledge of the availability of any tickets of said company at any location outside of the State of California; that said company does not carry passengers on tickets purchased outside of the State of California; that it does not transport passengers within the State of California upon tickets supplied by any other airline to said passengers in Chicago or New York, or elsewhere out of the State of California; that said company does not honor tickets of any other company covering passage from San Diego to Burbank, California, and from there to cities in the eastern part of the United States.

That the attached exhibits are samples of the tickets ordinarily and customarily utilized by Pacific Southwest Airlines.

/s/ HUGH N. WOOD.

Subscribed and sworn to before me this 15th day of May, 1954.

[Seal] /s/ ELEANOR F. GLITHERO,
Notary Public.

My commission expires October 10, 1954. [167]

[Title of District Court and Cause.]

AFFIDAVIT OF KENNETH G. FRIEDKIN

State of California,

County of San Diego—ss.

Kenneth G. Friedkin, being first duly sworn, deposes and states:

That he is President of Friedkin Aeronautics, Inc., doing business as Pacific Southwest Airlines. That said company is a California corporation, organized in 1949 and having its principal office and principal place of business at Lindbergh Field, San Diego, California. Since May, 1949, Pacific Southwest Airlines has operated from one to four Douglas DC-3 High Density seating passenger planes as a scheduled carrier between cities in the State of California. The general offices, operations office, maintenance base and other general facilities are at Lindbergh Field, San Diego, California. All of the directors are residents of the San Diego area and all of the stock of the corporation is owned by residents of that Area. The company has never had any contracts to carry mail for the United States [169]

Government, nor does it carry freight or cargo of any type.

The regularly scheduled passenger carrying operations of the company are limited to service between the cities of San Diego, Long Beach, Burbank and San Francisco, California. The company formerly, but no longer, serves Oakland. All of these cities are within the State of California. All flights do not stop at each station. The company carries approximately 10,000 passengers per month.

The company's tariff structure is filed with the Public Utilities Commission of the State of California, and as a common carrier, the company is required by that agency to transport any applicant when space is available. The Civil Aeronautics Board has never heretofore attempted to assert economic jurisdiction over the company and has never heretofore asserted that the company has violated Section 401 of said Act.

The vast majority of respondent's passengers carried upon the various segments of the company's routes are local commuter-type customers. All of the cities served by this carrier are sizeable communities, having a population in every instance of over 300,000 individuals. The San Francisco-Los Angeles route is known to be the most highly traveled of any two cities in the country. The route served by the Company in no way resembles the feeder type carriers, which, in various parts of the country, includ-

ing California, serve numerous small towns, transporting many passengers with scheduled connecting flights as part of a single passage. The tickets utilized by the carrier and the statements contained upon such tickets clearly illustrate the local nature of the operations and indicate the company's studious efforts to remain clear of the conditions which would subject the carrier to the multitude of rules and regulations under which an interstate carrier must operate.

The company employs 21 pilots and co-pilots, 10 stewardesses, 11 [170] administrative and executive employees and 60 maintenance and operations personnel. The necessary effect of any injunction relating to activities of the company or its flight operations would affect and interference with the daily operations of the company and would possibly require the rerouting of flights in order to assure compliance with such injunction, in view of the contention by the Civil Aeronautics Board that local carriage of a previous or future interstate passenger constitutes "interstate air transportation" within the meaning of the Civil Aeronautics Act. In the event that Pacific Southwest Airlines may have transported passengers within such suggested definition, affiant asserts such to have been a small minority of the company's operations and that any such traffic has been further diminished since the elimination of Oakland, California, as a scheduled stop.

That it would accordingly constitute an unjust burden for defendant to be enjoined from the carriage of any passengers during the pendency of an action to determine, upon the basis of adequate and substantial evidence and a full consideration of the applicable laws, whether there has in fact been any such violation.

/s/ KENNETH G. FRIEDKIN.

Subscribed and sworn to before me this 15th day of May, 1954.

[Seal] /s/ ELEANOR F. GLITHERO,
Notary Public.

My commission expires October 10, 1954. [171]

[Title of District Court and Cause.]

AFFIDAVIT OF JACK E. DUFFY, JR.

State of California,
County of San Diego—ss.

Jack E. Duffy, Jr., being first duly sworn, deposes and states:

Affiant is a resident of the City and County of San Diego, State of California, and is the credit manager of Friedkin Aeronautics, Inc., doing business as Pacific Southwest Airlines, and acting in such capacity, is in charge of the Credit Department of said Company and is fully familiar with the ex-

tent and method in which tickets for passage on said airline are sold and distributed.

That said company has no argreement with any other airline company pursuant to which interstate passengers arriving from points outside the State of California on any of such airlines are transported to their point of destination within the State of California by Pacific Southwest Airlines, and that said company has no agreement with any other airline company pursuant to which interstate passengers destined for points outside the State of [172] California are transported by Pacific Southwest Airlines to the terminals of any other such airline pursuant to any agreement.

That tickets for passage on Pacific Southwest Airlines are sold only at the regularly established ticket offices operated by the company and by independent ticket agents licensed by the company, all of which offices and agents are located within the State of California; and that affiant has no knowledge of the availability of any tickets of said company at any location outside of the State of California; that said company does not carry passengers pursuant to tickets purchased outside of the State of California; that it does not transport revenue passengers within the State of California upon tickets supplied to said passengers other than tickets duly issued by Pacific Southwest Airlines; that said company does not honor tickets of any other company covering passage from San Diego to

Burbank, California, and from there to cities in the eastern part of the United States.

/s/ JACK E. DUFFY, JR.

Subscribed and sworn to before me this 21st day of June, 1954.

[Seal] /s/ ELEANOR F. GLITHERO,
Notary Public.

My commission expires October 10, 1954. [173]

[Title of District Court and Cause.]

AFFIDAVIT OF ALEX DAVIDSON

State of California,
County of San Diego—ss.

Alex Davidson, being first duly sworn, deposes and states:

That on December 17, 1953, he was employed by Airline Tickets, Inc., an airline ticket agency at San Diego, California, that he is the Alex Davidson referred to on Page 4, of the affidavit of Robert F. Rickey on file and within action.

That affiant has read the said affidavit of Robert F. Rickey and in particular that portion thereof from line 11 to line 19 on page 4 of said affidavit which reads: "On December 17, 1953, affiant visited the office of Airline Tickets, Inc., and interviewed

Mr. Alex Davidson. Airline Tickets primarily represents the so-called American Air Bus transcontinental air-carriers, in addition to P.S.A. and California Central Airlines, and sells [174] San Diego-Burbank tickets on P.S.A. or California Central in conjunction with eastbound tickets on Large Irregular Carriers. Airline Tickets has established an inter-branch bank account with P.S.A. so that, when a P.S.A. ticket is sold by Airline Tickets, the amount of the ticket less the commission is deposited in this special account and is then transferred to the P.S.A. account by the bank."

Affiant avers that while he was employed by Airline Tickets, Inc., that the proceeds of any sales by said company of tickets of P.S.A. were deposited (after subtracting the commission) in a bank account of Friedkin Aeronautics, Inc., owners and operators of P.S.A., with the Bank of America, Five Points Branch, San Diego, California. That said deposit was made by a representative of Airline Tickets, Inc., who deposited said funds with the Main Branch of the Bank of America in San Diego upon an inter-branch deposit slip pursuant to the terms of which said Bank of America would cause the funds to be credited to the bank account of Friedkin Aeronautics, Inc., at the Five Points Branch.

That the sole purpose for the handling of the aforesaid funds was the convenience and the elimination of the extension of credit by Pacific South-

west to Airline Tickets, Inc., and that it did not constitute the establishment of a joint bank account by Airline Tickets, Inc., and Pacific Southwest Airlines.

/s/ ALEX DAVIDSON.

Subscribed and sworn to before me this 14th day of May, 1954.

[Seal] /s/ ELEANOR F. GLITHERO,
Notary Public.

My Commission expires October 10, 1954. [175]

[Title of District Court and Cause.]

AFFIDAVIT OF LEWIS T. GARDINER

State of California,
County of Los Angeles—ss.

Lewis T. Gardiner, being first duly sworn, deposes and states:

That he is an Attorney-at-Law duly licensed to practice in the State of California and in the United States District Court. That he is an associate of the firm of Meserve, Mumper & Hughes, Los Angeles, California.

That affiant participated as one of the attorneys for the defendant herein, Friedkin Aeronautics, Inc., doing business as Pacific Southwest Airlines, in a proceeding before the National Meditation

Board, designated file No. C-2200 in the records of said National Mediation Board, entitled "In the Matter of Investigation of Representation Dispute, Friedkin Aeronautics, Inc., doing business as Pacific Southwest Airlines." That said proceeding was initiated by a Notice of Hearing served upon said [176] company, pursuant to which a hearing before a mediator of the National Mediation Board was held at San Diego, California, on November 17, 1953.

That the question at issue in said proceeding and as stated in the decision of said National Mediation Board was whether Friedkin Aeronautics, Inc., doing business as Pacific Southwest Airlines, is a carrier within the meaning of Title II, Section 201, of the Railway Labor Act, as amended. (45 USCA, Sec. 181). That the statutory language particularly applicable to the aforesaid proceeding and to the question at issue therein was whether or not said company was a "common carrier by air engaged in interstate or foreign commerce."

That subsequent to said hearing, briefs were submitted by the parties thereto, and the National Mediation Board thereafter on March 18, 1954, issued its decision and ruling in said case, a copy of which is attached hereto, being entitled, "File No. C-2200 Dismissal, March 18, 1954."

Dated: May 14, 1954.

/s/ LEWIS T. GARDINER.

Subscribed and sworn to before me this 14th day of May, 1954.

[Seal] /s/ K. A. NELSON,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires Sept. 24, 1954. [177]

EXHIBIT A

National Mediation Board
Washington

File No. C-2200

In the matter of

REPRESENTATION OF EMPLOYEES

of

FRIEDKIN AERONAUTICS, INC., Doing Business as PACIFIC SOUTHWEST AIRLINES,
Airline Pilots

DISMISSAL

March 18, 1954

The services of the National Mediation Board were invoked, pursuant to Section 2, Ninth, of the Railway Labor Act, as amended, on September 28, 1953, by the Air Line Pilots Association, International, hereinafter referred to as ALPA, to investi-

gate and determine who may represent Airline Pilots, employees of Friedkin Aeronautics, Inc., doing business as Pacific Southwest Airlines, hereinafter referred to as the carrier.

At the time this application was received these employees were not represented by any organization or individual.

During the preliminary investigation of this application, the carrier took the position that it is not subject to the Railway Labor Act, as amended, for the reason that it is not engaged in interstate commerce within the meaning of that statute. ALPA, on the other hand, contended that certain phases of the carrier's operations bring them within the purview of the Railway Labor Act.

In view of the importance of this matter, the Board ordered a public hearing in order to afford all interested parties an opportunity to present evidence and argument in support of their respective positions. The hearing was held November 17, 1953, in the U. S. Post Office, San Diego, California, before Mediator William F. Mitchell, Jr., who, pursuant to Section 4, Fourth, of the Act, was authorized to preside at the hearing. Representatives of the organization and the carrier were present at the hearing and were afforded full opportunity to introduce evidence supporting [178] their respective positions, and to examine and cross-examine witnesses. Briefs were submitted by the parties for the consideration of the Board.

Issue

The question to be determined in this case is whether Friedkin Aeronautics, Inc., doing business as Pacific Southwest Airlines, is a carrier within the meaning of Title II, Section 201, of the Railway Labor Act, as amended.

Discussion

Title II, Section 201, of the Act states:

“Section 201. All of the provisions of Title I of this Act, except the provisions of Section 3 thereof, are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.”

Friedkin Aeronautics, Inc., doing business as Pacific Southwest Airlines, is a California corporation, organized in 1949. It utilizes a fleet of four Douglas DC-3 passenger planes in its operations as a scheduled carrier between cities within the State of California. The general offices, operations office, maintenance base and other general facilities are at Lindbergh Field, San Diego, California. The regular scheduled operations of the carrier are limited

to service between the cities of San Diego, Long Beach, Burbank, San Francisco and Oakland, California. The Company's tariff structure is on file with the Public Utilities Commission of the State of California, and its rates are regulated [179] by that Commission.

The National Mediation Board has jurisdiction over the operations of this carrier and the provisions of the Railway Labor Act apply only if the carrier is (1) "a common carrier by air engaged in interstate or foreign commerce" or (2) "a carrier by air transporting mail for or under contract with the United States Government."

There has been no assertion made nor evidence presented to indicate that the second criterion indicated above is a factor in the case under consideration. ALPA has based its case on the assertion that the carrier is engaged in interstate commerce and, in support of this position presented extensive evidence to indicate that a traveller purchasing a ticket for passage from a point in California to a point beyond the boundaries of that state or the reverse may be carried on the portion of that trip which is within the boundaries of the State of California on the equipment of this carrier. Considerable testimony was presented to show that a ticket could be purchased from North American Air Coach System for such a trip. This line of testimony was confined to that portion of the route of Pacific Southwest between San Diego and Los Angeles or

Burbank, California; or vice versa. No evidence was presented indicating any exchange of "inter-state" passengers with other airlines at San Francisco or Oakland.

Evidence was presented, however, by the carrier and the ticket agent of the North American Air Coach System showing that this agency is not a commercial airline nor a common carrier engaged in the transportation of passengers, but acts only as a ticket bureau or agency engaged in the sale of tickets for numerous airlines, among them being Pacific Southwest Airlines. The record indicates that the tickets sold by this agency for Pacific Southwest Airlines are clearly marked to indicate that its services are confined to the State of California. While the record tends to show [180] that in some instances passengers may have utilized the services of this carrier in a portion of a journey which had its origin or ultimate destination outside the State of California, no evidence was offered to indicate that this carrier has an interchange agreement or understanding with any other carrier or agency to transport passengers on any part of an interstate journey. Further, no evidence was presented as to the volume and extent of such traffic. It was shown by the carrier that any such passengers hold or are sold tickets via Pacific Southwest Airlines for that portion of their trip in the State of California made on this carrier.

The Civil Aeronautics Administration, in issuing

a Commercial Operator's Certificate to this carrier, specifically stated that the carrier is:

“Authorized to operate as a commercial operator and to conduct common carrier operations carrying passengers intrastate on a schedule basis.” (Emphasis supplied).

Section 401 of the Civil Aeronautics Act states:

“No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Authority authorizing such air carrier to engage in such transportation.”

Air transportation is defined in that Act to mean: “interstate, overseas, or foreign air transportation or the transportation of mail by aircraft.” (Section 1 (10)).

The Civil Aeronautics Board has never issued a Certificate of Public Convenience and Necessity which would be required if this carrier were engaged in interstate commerce. Nor does the record indicate that this carrier has ever applied for such a certificate. On the contrary, the evidence points to a conscientious effort on the part of the carrier to limit its [181] operations to those of an intrastate character. It does not hold itself out to the traveling public as furnishing air transportation on other than an intrastate basis in the State of California.

In only one instance since its organization in 1949 is there record of a flight outside the bounda-

ries of the State of California by this carrier. That flight was a charter operation in which the carrier furnished an airplane and flight personnel to transport a military football team from San Diego, California, to Phoenix, Arizona, and return under a special agreement with the Navy. No evidence was presented of any other instance of operation of this carrier's planes across the borders of the State of California. This isolated occasion cannot reasonably be construed as affecting the carrier's normal commercial operations as a common carrier by air engaged in intrastate business.

Conclusion

On the basis of the entire record in this case, the Board finds that Friedkin Aeronautics, Inc., doing business as Pacific Southwest Airlines, is not a carrier within the meaning of Title II, Section 201 of the Railway Labor Act, as amended. The National Mediation Board has no jurisdiction over this carrier, and the application of the Air Line Pilots Association, International, to investigate a representation dispute pursuant to Section 2, Ninth, of the Railway Labor Act among Airline Pilots employees of that carrier, is hereby dismissed.

By order of the National Mediation Board.

/s/ E. C. THOMPSON,
Secretary.

(Seal of National Mediation Board.) U.S.A.

[Endorsed]: Filed July 12, 1954. [182]

[Title of District Court and Cause.]

NOTICE OF MOTION AND MOTION TO
AMEND COMPLAINT

To Meserve, Mumper and Hughes, Attorneys for Defendant, Please Take Notice That on July 19, 1954, at ten o'clock a.m., or soon thereafter as counsel can be heard in Room 5, United States Court House and Post Office Building, Temple and Spring Streets, Los Angeles, California, plaintiff will move said Court to amend paragraph 3 of the Complaint herein by striking therefrom the word "Nevada" and substituting in place thereof the word "California."

Dated: July 14, 1954.

STANLEY N. BARNES,
Assistant Attorney General;

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief of Civil Division;

/s/ JOSEPH D. MULLENDER, JR.,
Assistant U. S. Attorney;

JAMES E. KILDAY, and
ALBERT PARKER,
Special Assistants to the
Attorney General;

JOHN F. WRIGHT,
Acting Chief, Office of Compliance, Civil Aeronautics Board, Attorneys for Plaintiff.

Good cause appearing therefor, it is hereby ordered that the U. S. Attorney may file and serve the above-entitled Motion and Notice thereof on July 15, 1954; and Rule 6(D) FRCP and Rule 3(B) of the local rules are hereby ordered waived.

/s/ HARRY C. WESTOVER,
United States District Judge.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 15, 1954.

[Title of District Court and Cause.]

AFFIDAVIT OF JAMES FISCHGRUND

State of California,
County of Los Angeles—ss.

James Fischgrund, being first duly sworn, deposes and says:

That he is an officer, to wit, the Executive Vice President of North American Air Coach System, Inc. That this company is not a commercial airline and is not a common carrier engaged in the transportation of passengers. That this company is, in fact, a ticket agency engaged in the sale of tickets of numerous airlines. That this company has sold tickets of Pacific Southwest Airlines in the same manner in which it has sold tickets of other airlines. That this company has no agreement with Pacific Southwest Airlines for the honoring of any tickets

of any other airline. That this company has never sold any tickets for Pacific Southwest Airlines outside of the State of California, and affiant has no knowledge of any tickets of Pacific Southwest Airlines ever being sold outside the State of California.

/s/ JAMES FISCHGRUND.

Subscribed and sworn to before me this 13th day of May, 1954.

[Seal] /s/ HELEN PETERSON,
Notary Public in and for Said
County and State.

My Commission expires August 10, 1955. [184]

[Title of District Court and Cause.]

AFFIDAVIT OF WILLIAM GALLAGHER

State of California,
County of Los Angeles—ss.

William Gallagher, being first duly sworn, deposes and states:

That he is employed by Pacific Southwest Airlines as Regional Manager and is presently stationed at Lockheed Air Terminal, Burbank, California, and has been so employed for more than six months last past.

That Affiant has received a list of the irregular

or non-scheduled air carriers named in the various affidavits filed herein on behalf of plaintiff. That on July 14, 1954, he inquired of Mr. James Rudolph, Inspector, Civil Aeronautics Authority, Lockheed Air Terminal, Burbank, California, with respect to the effectiveness of the "Commercial Operators Certificate" of such air carriers, which Certificate affiant is advised is a requirement of law for the operation of such air carriers. [185] Following a review of the records of said Civil Aeronautics Authority office at Burbank, California, the aforesaid James Rudolph advised affiant that the Certificates of the following air carriers had expired and are not currently effective:

U. S. Aircoach,
Paul Mantz Air Services,
Air Services, Inc.,
Air America, Inc.,
Caribbean American Lines, Inc.

That Affiant is aware of his own knowledge that the above-named air carriers have not operated into or out of Lockheed Air Terminal at Burbank, California, as a common carrier for more than five or six months last past; that Affiant is further aware of his own knowledge that Peninsular Air Transport, Aero Finance Corporation and Regina Cargo Airlines, Inc., have not operated into or out of Lockheed Air Terminal, Burbank, California, as a common carrier for more than five or six months last past.

/s/ WILLIAM GALLAGHER.

Subscribed and sworn to before me this 17th day of July, 1954.

[Seal] /s/ FLORENTINE G. BOERNER,
Notary Public in and for Said
County and State.

My Commission expires Nov. 19, 1957.

Receipt of copy acknowledged.

[Endorsed]: Filed July 19, 1954. [186]

[Title of District Court and Cause.]

MOTION FOR JUDGMENT ON THE
PLEADINGS

Defendant moves the court to enter judgment for defendant on the pleadings in the above-entitled action on the ground that the complaint herein fails to state a claim against defendant upon which relief can be granted, in that it does not allege facts sufficient to show that defendant engaged in the carriage by aircraft of mail or persons or property as a common carrier for compensation or hire in commerce in the manner more specifically defined by the Civil Aeronautics Act of 1938, as amended. (49 U.S.C.A., Sec. 401, et seq.).

Dated: July 12, 1954.

MESERVE, MUMPER &
HUGHES.

By /s/ LEWIS T. GARDINER,
Attorneys for Defendant.

Receipt of Copy acknowledged.

[Endorsed]: Filed July 12, 1954. [188]

[Title of District Court and Cause.]

MEMORANDUM OF OPINION RE ORDER TO SHOW CAUSE

Plaintiff Civil Aeronautics Board filed an action against defendant, doing business as Pacific Southwest Airlines, for an injunction, alleging in part that defendant was in violation of Section 401 (a) of the Civil Aeronautics Act, 49 U.S.C. 481 (a). It is alleged by plaintiff that defendant carried on its flights—operated at and between points within the State of California—a substantial number of persons whose journeys originated or terminated at places outside the State of California, and that by reason of such flights defendant engaged in interstate air transportation as an air carrier, within the meaning of the Act. It is further alleged defendant had not been issued by plaintiff a [190] certificate of public convenience and necessity, authorizing defendant to engage in such air transportation.

At the time of filing the complaint plaintiff had the Court make its order to show cause, requiring defendant to appear before this Court and show cause why, during the pendency of this action, a temporary restraining order should not be issued. The matter came on before the Court upon the order to show cause, and from the evidence introduced at the hearing it was established that Pacific Southwest Airlines is an air carrier which operates wholly within the State of California; that it does not cross state lines nor make stops at any point

outside the State of California and does not carry passengers or freight to any points outside the state. It would appear from the testimony, however, that on numerous occasions defendant did pick up passengers, for transportation wholly within the State of California, who had completed journeys from points outside the state or who were commencing journeys to points outside the state; but inasmuch as it appears that in at least some instances the defendant has transported a substantial number of persons whose journey origins or destinations have been places outside the State of California, plaintiff contends it is entitled to a temporary restraining order during the pendency of this action and, eventually, to a permanent restraining order.

Plaintiff admits this entire action depends upon the definition of the term "interstate air transportation" and that if the Court cannot find from the evidence produced before it that defendant has been engaged in interstate air transportation, this Court does not have any jurisdiction of the complaint and it should be dismissed. [191]

Defendant alleges it is not now and has never been engaged in interstate air transportation; that it is an air transportation company which operates wholly within the State of California; does not carry passengers or freight across state lines and is regulated solely by the California laws relative to intrastate air transportation companies; that it has complied with the state law and is operating under

and by virtue of state regulations and the authority vested in the State of California.

Plaintiff admits there are no reported cases sustaining its contention that a purely local air transportation company which picks up passengers to transport them between various points within the state, the origin or terminal points of whose journeys have been places outside the State of California, is engaged in interstate air transportation as defined by the Civil Aeronautics Act of 1938. Plaintiff contends, however, that a similar action was filed in the District Court of another district and that as a result thereof a Consent Decree was entered. Consequently, so far as reported cases are concerned, the instant case is one of first impression.

The Civil Aeronautics Act was passed by Congress in 1938, and it has been operative at all times since that date. During this period the administrative agencies created under the Act have attempted in only a few instances to assert jurisdiction over an intrastate air common carrier because some of its passengers, transported solely within state boundaries, may be either completing journeys which originated outside the state or commencing journeys which terminated outside the state. [192]

Defendant contends the Civil Aeronautics Act establishes two primary types of regulatory jurisdiction: (1) Safety and (2) Economic. It further contends that enforcement of safety regulations is vested in the Civil Air Administration and its scope of authority in commerce is premised in Section 1

(3) and 1 (20) of the Act, which defines the term "air commerce." It is also defendant's contention that enforcement of economic regulations is vested in the Civil Aeronautics Board, and its scope of authority in commerce is premised on Section 1 (1) and 1 (21) of the Act, which defines the term "air transportation."

Defendant alleges that although it may be subject to the safety regulations of the Civil Aeronautics Act, nevertheless, it is not subject to the economic regulatory provisions thereof. It is defendant's contention that Congress when it passed the Civil Aeronautics Act intended that economic regulatory jurisdiction could be asserted by the Federal Government only under interstate air transportation.

Plaintiff in this action somewhat concurs with defendant's contention, inasmuch as plaintiff agrees that unless the Court can find defendant has been engaged in interstate air transportation, it does not have jurisdiction. The problem is very succinctly stated in plaintiff's Memorandum of Points and Authorities in support of its motion for preliminary injunction as follows:

"The defendant has regularly and persistently transported persons as a common carrier for compensation and hire between various cities of the State of California when such transportation involved the commencement or termination of an interstate journey and thereby has engaged in interstate air transportation." [193] Plaintiff has

cited to the Court a number of cases relative to transportation by bus and railroad. However, rules and regulations relative to interstate travel by bus and railroad may not be controlling in an action filed under the Civil Aeronautics Act.

The Civil Aeronautics Act defines "air commerce," "interstate air commerce," "air transportation" and "interstate air transportation." Inasmuch as Congress has seen fit to give four definitions this Court must assume there is some distinction among the various sections.

"Air commerce" is defined as interstate, overseas or foreign air commerce or the transportation of mail by aircraft, or any operation or navigation of aircraft within the limits of any civil airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in interstate, overseas, or foreign air commerce. Air commerce, consequently must directly affect or endanger safety.

Subsection (3) of § 401 evidently is a safety regulation.

Subsection (10) defines "air transportation" as meaning interstate, overseas, or foreign air transportation or the transportation of mail by aircraft.

"Interstate air commerce" [Subsection (20)] means the carriage by aircraft of persons or property for compensation or hire, or the carriage of mail by aircraft, or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation, in commerce between the various states.

“Interstate air transportation” means the carriage by aircraft of persons or property as a common carrier for [194] compensation or hire or the carriage of mail by aircraft in commerce between the various states.

If the aircraft crossed state lines, it would be very easy to determine that such aircraft was engaged in air transportation. But when an aircraft does not cross a state line but carries passengers who, in furtherance of a journey after disembarking from the local aircraft may cross a state line, or picks up passengers who have partially completed a journey, crossing state lines, an entirely different and more difficult problem is presented. Do these subsections of §401 refer exclusively to aircraft? And unless the aircraft crosses a state line, is it engaged in interstate air transportation? Defendant contends the subsections refer to aircraft and do not refer to passengers.

Congress, in passing the Civil Aeronautics Act of 1938 (52 Stat. 973, Chapter 601) evidently felt there were two phases of regulation. Title IV is entitled “Air Carrier Economic Regulation” and Title VI is entitled “Civil Aeronautics Safety Regulation.” There is no contention in this action that defendant has not complied with the Act relative to safety regulations. Plaintiff is endeavoring to impose upon an intrastate carrier the economic regulations of the Act.

Congress has power to promote, protect and regulate interstate air commerce and transportation.

Congress may in its discretion occupy the whole field of air transportation or, if it so desires, may pass legislation which occupies only a part of the field in which the Federal regulation is to apply. Congress alone can determine the extent to which Federal power is applicable. Congress did occupy the entire field relative to safety regulation. Did it also occupy the [195] entire field relative to economic regulation?

When this Act was being considered by a subcommittee of the Committee on Interstate Commerce of the United States Senate (Hearing on S.3659, 75th Congress, Third Session, April 6 and 7, 1938) Senator Pat McCarran, author of the Act, gave his interpretation of what the economic regulatory scope should be. He said:

“The thought that you are exploiting now is one that the author of S.3659 himself had in mind, but he did not want to become revolutionary with one stroke. In other words, he thought that with proper cooperation between federal authorities and the state authorities for a period of time, at least, eventually if it were deemed proper, we could come to the condition whereby federal control of the air would not recognize state lines.”

Evidently there was—at least in the mind of Senator McCarran—the thought that economic regulations did not do away with state lines and that intrastate carriers, operating solely between points within the state, would not be subject to the economic regulations, but that at some time in the future Congress

could pre-empt the entire field. No effort has been made by Congress to do so. Unless it was pre-empted at the time the Act was passed, the states still have jurisdiction relative to their individual, intrastate carriers.

Since the Act was passed in 1938, so far as this Court knows this is only the second attempt to have a Court determine that Congress has pre-empted the entire field [196] relative to economic regulations. In the light of the statement as made by Senator McCarran at the time the Act was passed (that he did not believe the Act pre-empted the entire field relative to economic regulation) and inasmuch as this is the second attempt within sixteen years by which plaintiff tries to achieve by judicial determination what Congress failed to express explicitly, it is not felt that under the circumstances plaintiff is entitled to a preliminary restraining order.

Courts are called upon to interpret Acts as passed by Congress and should not by judicial determination pre-empt the legislative function of Congress. If this is the serious matter which plaintiff appears to deem it, then it is a subject for legislation; and if the necessity arises, we are quite certain Congress will pass an Act in which there is no question that it is occupying the entire field relative to economic regulation of all air carriers, regardless of state lines.

There is no dispute between the parties to this action concerning the material facts, and as herein-

before stated unless this Court finds defendant was engaged in interstate air transportation, it does not have jurisdiction. The Court finds that defendant was not engaged in interstate air transportation and, consequently, the Court is without jurisdiction, and this action must be dismissed (Rule 12, Federal Rules of Civil Procedure); and such is the order.

Dated: September 16, 1954.

/s/ HARRY C. WESTOVER,
District Judge.

[Endorsed]: Filed September 17, 1954. [197]

In the District Court of the United States, Southern
District of California, Central Division

No. 16754 HW

CIVIL AERONAUTICS BOARD,

Plaintiff,

vs.

FRIEDKIN AERONAUTICS, INC., Doing Busi-
ness as PACIFIC SOUTHWEST AIRLINES,

Defendant.

ORDER AND JUDGMENT GRANTING
MOTION TO DISMISS

This cause came on for hearing on the 19th, 22nd, 23rd and 26th days of July, 1954, on the motion of plaintiff for preliminary injunction and on the mo-

tion of defendant to dismiss duly made herein, whereupon, after receiving evidence both oral and documentary, and after hearing arguments of counsel for the respective parties, and upon due consideration thereof, it is hereby

Ordered, Adjudged and Decreed that the motion of plaintiff for a preliminary injunction be and hereby is denied and that the motion of defendant for dismissal of the action be and hereby is granted, and judgment is hereby rendered dismissing the complaint.

Dated : September 23rd, 1954.

/s/ HARRY C. WESTOVER,
United States District
Judge. [198]

Approved as to form:

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ and
JOSEPH D. MULLENDER, JR.,
Assistants U. S. Attorney;

STANLEY N. BARNES,
Assistant Attorney General;

JAMES E. KILDAY and
ALBERT PARKER,
Special Assistants to the
Attorney General;

JOHN F. WRIGHT,
Acting Chief, Office of Compliance, Civil Aeronautics
Board;

By /s/ ANDREW J. WEISZ,
Attorneys for Plaintiff.

[Endorsed]: Filed September 23, 1954.

Docketed and entered September 24, 1954. [199]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO UNITED STATES
COURT OF APPEALS UNDER RULE 73(b)

Notice is hereby given that the Civil Aeronautics Board, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the order and final judgment entered in this action on September 23, 1954, denying plaintiff's motion for a preliminary injunction and granting the motion of defendant for dismissal of the action.

STANLEY N. BARNES,
Assistant Attorney General;

LAUGHLIN F. WATERS,
United States Attorney;

MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief of Civil Division;

/s/ ANDREW J. WEISZ,

Assistant U. S. Attorney;

/s/ DANIEL M. FRIEDMAN,

Special Assistant to the Attorney General;

JOHN F. WRIGHT,

Attorney, Office of Compliance, Civil Aeronautics Board, Attorneys for Plaintiff.

Affidavit of Service by Mail attached.

[Endorsed]: Filed November 22, 1954. [200]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 207, inclusive, contain full, true and correct copies of Complaint; Answer; Order to Show Cause with Affidavits in Support; Affidavits in Opposition to Order to Show Cause; Affidavits of James Fischgrund and William Gallagher; Motion for Judgment on the Pleadings; Memorandum of Opinion Re Order to Show Cause; Order and Judgment Granting Motion to Dismiss; Notice of Appeal; Order Extending Time to File Record and Docket Appeal; Designation of Record on Appeal and Statement of Points on Which Appellant In-

tends to Rely on Appeal; which, together with the Reporter's Transcript of Proceedings held on July 19, 22, 23 and 26, 1954, and the original Plaintiff's Exhibits 1 to 25, inclusive, transmitted herewith, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 7th day of February, 1955.

[Seal] EDMUND L. SMITH,
Clerk;

By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 14648. United States Court of Appeals for the Ninth Circuit. Civil Aeronautics Board, Appellant, vs. Friedkin Aeronautics, Inc., Doing Business as Pacific Southwest Airlines, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed February 8, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit
No. 14648

FRIEDKIN AERONAUTICS, INC.,
Appellant,
vs.

FRIEDKIN AERONAUTICS, INC.,
Appellee.

STATEMENT OF OBJECTIONS BY APPEL-
LEE TO PORTIONS OF RECORD DESIG-
NATED BY APPELLANT FOR INCLU-
SION IN THE PRINTED RECORD

* * *

III.

Objections of Appellee Friedkin Aeronautics, Inc.,
to the Printing of Certain Portions of the Rec-
ord as Designated by Appellant.

Appellant has designated as material to consid-
eration of this appeal and for inclusion in the
printed record certain affidavits filed in the District
Court by appellant in support of its motion for
preliminary injunction. These affidavits were exe-
cuted by the following agents or employees of ap-
pellant: John F. Wright, Compliance Attorney, and
Joseph W. Stout, Jr., Robert F. Rickey, John W.
Chambers, and John B. Flynn, all of whom were
Air Transport Examiners. At the hearing of the
matter below on July 19, 1954, the Court unequivocally
indicated to said counsel for the plaintiff that
it would not consider granting injunctive relief upon

the basis of affidavits; whereupon the Court directed counsel for the plaintiff to produce witnesses in support of its motion for preliminary injunction and accordingly continued the proceeding until July 22, 1954, to afford plaintiff opportunity to do so. On July 22, 23 and 26, 1954, plaintiff, represented by said counsel, did present evidence in support of its case by the use of witnesses, to wit, the aforesaid John W. Chambers, Robert F. Rickey, and Joseph W. Stout, all of whom had prepared affidavits which appellant now seeks to have printed as part of the appellate record. In addition, plaintiff utilized witnesses Robert S. Enis, Tillie Gamble, Fritz Hutcheson, Dorothy Laumeister, Stephen C. Russell and Jack F. Wooton.

The affidavits which appellant seeks to have printed are cumulative and duplicative of the oral testimony, they are voluminous and in some instances illegible, and were prepared upon the basis of interviews of the respective affiants with third parties and consist of conclusions, assumptions and speculative observations of such affiants as a result of hearsay evidence derived by such affiants from such interviews.

Appellee submits there is no occasion for the preparation of an unduly voluminous printed record in the instant proceeding by the inclusion of the affidavits hereinabove noted and submits that the factual evidence necessary to the consideration of plaintiff's case is adequately set forth in the reporter's transcript and other documents designated by appellant and appellee.

Dated: February 25, 1955.

Respectfully submitted,

/s/ LEWIS T. GARDINER, and
MESERVE, MUMPER &
HUGHES,

Attorney for Appellee,
Friedkin Aeronautics, Inc.

[Endorsed]: Filed February 26, 1955.

In the United States Circuit Court of Appeals
for the Ninth Circuit
No. 14648

CIVIL AERONAUTICS BOARD,

Appellant,

vs.

CALIFORNIA CENTRAL AIRLINES, INCOR-
PORATED,

Appellee.

No. 14649

CIVIL AERONAUTICS BOARD,

Appellant,

vs.

FRIEDKIN AERONAUTICS, INC., Doing Busi-
ness as PACIFIC SOUTHWEST AIRLINES,

Appellee.

STIPULATION RE CONSOLIDATION OF
APPEALS AND ORDER THEREON

Whereas, the above-entitled actions were tried to-
gether in the United States District Court for the

Southern District of California, Central Division,
before the Honorable Harry C. Westover, Judge of
said Court, and

Whereas, the said actions present common ques-
tions of law, and were decided upon said common
questions of law in the Court below, and

Whereas, it appears both expedient and economi-
cal that these appeals should be heard and con-
sidered together,

It Is Hereby Stipulated by and between the re-
spective parties hereto, through their attorneys, and
subject to the approval of the Court, that the said
appeals may be heard and considered together and
consolidated for the purposes of appeal.

STANLEY N. BARNES,
Assistant Attorney General;

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief Civil Division;

/s/ ANDREW J. WEISZ,
Assistant U. S. Attorney;

JAMES E. KILDAY, and
ALBERT PARKER,

Special Assistants to the At-
torney General;

JOHN F. WRIGHT,
Acting Chief, Office of Compliance, Civil Aeronautics
Board, Attorneys for Appellant.

MESERVE, MUMPER &
HUGHES,

By /s/ LEWIS T. GARDINER,

Attorneys for Appellee, Fried-
kin Aeronautics, Inc.

QUITTNER & STUTMAN,
PERRY H. TAFT, and
ALFRED C. ACKERSON,

By /s/ ALFRED C. ACKERSON,

Attorneys for Appellee, Cali-
fornia Central Airlines, Inc.

ORDER

Upon consideration of the foregoing stipulation,
and good cause appearing therefor,

It is Ordered that the above-entitled appeals shall
be heard and considered together, and consolidated
for purposes of appeal.

Dated: Feb. 9, 1955.

/s/ WILLIAM DENMAN,

Chief Judge.

/s/ WM. HEALY,

/s/ H. T. BONE,

Judges of the United States
Court of Appeals.

[Endorsed]: Filed February 10, 1955.

[Title of Court of Appeals and Cause.]

Nos. 14648 & 14649

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL

In accordance with Rule 19(6) of the Rules of Practice of this Court, Appellant states that the points on which it intends to rely on appeal are as follows:

Point I.

The District Court erred in holding that the economic regulatory provisions of the Civil Aeronautics Act have no application to a common carrier by air whose operations of aircraft are confined within the boundaries of a single state.

Point II.

The District Court erred in failing to recognize and to hold upon the basis of the record below that defendants are engaged in unauthorized interstate air transportation within the meaning and in violation of the Civil Aeronautics Act.

Point III.

The District Court abused its discretion in denying the motions below for temporary injunctions.

Point IV.

The District Court erred in dismissing the complaints below.

STANLEY N. BARNES,
Assistant Attorney General;

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief of Civil Division;

/s/ ANDREW J. WEISZ,
Assistant U. S. Attorney;

/s/ DANIEL M. FRIEDMAN,
Special Assistant to the At-
torney General;

JOHN F. WRIGHT,
Attorney, Office of Compliance, Civil Aeronautics
Board, Attorneys for Plaintiff.

Affidavit of Service by Mail attached.

[Endorsed]: Filed February 16, 1955.